



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 680 OF 2022

Namdeo s/o Baburao Ingle/Thakur,
Aged about 37 years, Occ. - Nil,
R/o At post – Dasarkhed, Tahsil -
Malkapur, District – Buldhana.

.... PETITIONER

VERSUS

The Vice-Chairman/Member Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Chaprashipura,
Amravati.

.... RESPONDENT

Ms. Preeti Rane and Ms. Himani Kavi, Counsel for the petitioner,
Mr. H.R. Dhumale, AGP for the respondent.

CORAM : NITIN W. SAMBRE
& ABHAY J. MANTRI, JJ.
DATED : 22nd JULY, 2024

ORAL JUDGMENT : (Per : Abhay J. Mantri, J.)

Rule. Rule made returnable forthwith. Heard finally with
consent of the learned Counsel for the parties.

2. The tribe claim of the petitioner that he belongs to Thakur
Scheduled Tribe came to be invalidated by the respondent-Scheduled
Tribe Caste Certificate Scrutiny Committee, Amravati (for short,

‘Committee’) vide impugned order dated 26-11-2021. Being aggrieved by the said order, the petitioner has preferred this petition.

3. The petitioner claims that he belongs to Thakur Scheduled Tribe. Accordingly, he applied to the Sub-Divisional Officer, Malkapur for grant of Caste Certificate. However, by order dated 14-12-2011 the Sub-Divisional Officer refused to issue the Caste Certificate, which order was challenged before the Scrutiny Committee. The Committee vide order dated 18-2-2014 confirmed the order of the Sub-Divisional Officer. The said order of the Committee was challenged in Writ Petition No.2386/2014, which came to be allowed and directed the competent authority to issue the Caste Certificate in favour of the petitioner. Pursuant to the said order, the Sub-Divisional Officer, Malkapur issued the Caste Certificate in favour of the petitioner on 15-4-2015.

4. The petitioner through Tahsildar, Malkapur submitted his Caste Certificate and other documents before the Committee for verification on 13-7-2015. The Committee vide order dated 09-11-2016 cancelled the Caste Certificate issued in favour of the petitioner. The said order was challenged by the petitioner in Writ Petition No.1883/2017 before this Court. By order dated 08-1-2018

this Court quashed and set aside the said order dated 09-11-2016 and directed the Committee to accept the caste claim of the petitioner and decide the same in accordance with law.

5. After that, the petitioner again approached this Court by filing Writ Petition No.1252/2020 and sought direction to direct the Committee to decide his caste claim expeditiously. This Court by passing order on 25-1-2021 directed the Committee to decide the claim of the petitioner within prescribed time limit. Pursuant to the order of this Court, the petitioner appeared before the Committee on 02-2-2021 and furnished the documents in support of his claim before the Committee.

6. The Committee being dissatisfied with the documents had forwarded the proposal to the Vigilance Cell for a detailed enquiry. The Vigilance Cell conducted the enquiry and submitted its report to the Committee on 22-1-2019. During the vigilance cell, findings were found contrary to the claim made by the petitioner. Therefore, copy of the vigilance cell report was served on the petitioner vide show cause notice dated 08-3-2019 and called his explanation on the same. He replied the same on 20-7-2021. After considering the vigilance cell report, explanation and the documents produced on record, the

Committee invalidated the claim of the petitioner that he belongs to Thakur Scheduled Tribe.

7. Ms. Himani Kavi, learned Counsel appearing for the petitioner has strenuously argued that the petitioner to substantiate his claim had submitted twenty-two documents before the Committee. Out of them, one document of the year 1941 pertaining to his grandfather Laxman Sampat Thakur wherein his caste is shown as 'Thakur'. So also the other documents from the year 1954 till 2016 pertaining to his ancestors and himself wherein their caste is shown as 'Thakur'. The petitioner also submitted three Validity Certificates issued in favour of his blood relatives before the Committee. However, without considering the said documents, the Committee has erred in holding that the petitioner has failed to prove the affinity test and, therefore, on this ground alone rejected the caste claim of the petitioner.

8. She has further canvassed that the affinity test cannot be termed as a litmus test as well as the pre-constitutional era documents have more probative value and, therefore, she argued that the petitioner's case is covered by the judgments in the cases of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti v. The State of*

Maharashtra and others reported in *2023(2) Mh.L.J. 785*, and *Apoorva Vinay Nichale v. Divisional Caste Certificate Scrutiny Committee and others* reported in *2010(6) Mh.L.J. 401*. Hence, she urged for allowing the petition.

9. As against above, Mr. H.R. Dhumale, learned Assistant Government Pleader opposes the petition on the ground that the petitioner has failed to prove the affinity test that he belongs to Thakur Scheduled Tribe. He has further submitted that the Validity Certificates issued in favour of Rohit and Rahul were without jurisdiction as the Nashik and Aurangabad Scrutiny Committee were not having jurisdiction to issue the same and, therefore, the said Validity Certificates are not helpful to the petitioner in support of his claim. Hence, the Committee has rightly discarded and rejected the caste claim of the petitioner and no interference is required in the impugned order.

10. We have considered the rival submissions of the learned Counsel for the parties, perused the impugned order, record and judgments relied on by the learned Counsel for the petitioner.

11. At the outset, it appears that the petitioner in support of his claim had produced twenty-two documents before the Committee. Out of them, one document i.e. extract of the Birth Register pertains to his grandfather Laxman Sampat Thakur dated 29-1-1941, wherein his caste is shown as 'Thakur' and in rest of the other documents from 1954 to 2016 pertain to his ancestors in which their cast is shown as 'Thakur'. The Committee and the Vigilance Cell have not disputed these documents and entries therein which depict that the petitioner and his ancestors belong to Thakur caste, but his claim was refuted only on the ground that he failed to prove the affinity test. For that purpose, we would like to refer the law laid down in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* cited *supra* wherein the Hon'ble Apex Court has held that the affinity test cannot be term as a 'litmus test'. So also it is observed that the document of the pre-constitutional era has got the highest probative value than the subsequent documents.

12. In view of the above settled position of law, the question of refusing to grant certificates based on the finding that the petitioner has failed to prove the affinity test, does not survive. Per contra, it seems that on the basis of pre-constitutional era and other documents categorically denote that the petitioner and his ancestors belong to Thakur Scheduled Tribe.

13. Apart from above, the petitioner to substantiate his claim has produced three Validity Certificates issued in favour of his blood relatives by the Committees. During the vigilance enquiry, Rohit and Raju are shown as real brother and cousin brother of the petitioner. Their relationship is not disputed. Moreover, vide order dated 29-9-2023 in Writ petition No.869/2023 this Court allowed the petition filed by Raju (real brother of the petitioner) and directed the Committee to issue the Validity Certificate in his favour. Pursuant to the said order, the Committee has issued the Validity Certificate in his favour.

14. However, till this date, the Committee has not initiated any step for recalling all these three Validity Certificates. Therefore, we do not find substance in the findings given by the Committee in that regard.

15. Considering the above discussion, it is evident that the petitioner to substantiate his claim has produced the pre-constitutional era document of the year 1941 pertaining to his grandfather wherein his caste denotes as 'Thakur'. The said document is having more probative value. Likewise, in view of the law laid down in the case of *Apoorva Vinay Nichale*, the petitioner's claim ought not to have been

rejected by the Committee. The same status shall be awarded to him that he belongs to Thakur Scheduled Tribe. Thus it seems that based on the law laid down in the case of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti***, the petitioner is entitled to get the Validity Certificate.

16. In this background, we deem it appropriate to allow the petition. The petition stands allowed. The impugned order dated 26-11-2021 passed by the respondent-Committee is hereby quashed and set aside. It is declared that the petitioner belongs to 'Thakur' Scheduled Tribe. The respondent-Committee is directed to issue Validity Certificate in favour of the petitioner within a period of four weeks from the date of production of copy of this judgment.

17. Rule is made absolute in the above terms.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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